Nos. 78-1545, 78-1549, 80-951 (Consolidated)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ANNE B. ZIPES, *et al.*,
Petitioners,

v.

TRANS WORLD AIRLINES, INC.,
Respondent,

TRANS WORLD AIRLINES, INC.,
Cross-Petitioner,

v.

ANNE B. ZIPES, *et al.*,
Respondents,

INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS,
Petitioner,

v.

TRANS WORLD AIRLINES, INC.,
and ANNE B. ZIPES, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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RESPONSE OF INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS TO MOTION OF TRANS WORLD AIRLINES TO LIMIT REVIEW AND ALTERNATIVE MOTIONS BY THE PLAINTIFF CLASS

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The Independent Federation of Flight Attendants, Petitioner in Case No. 80-951 (hereinafter "the Union") has read the motion of TWA, and the alternative motions of Plaintiffs with much interest. We make the following brief response.

1. The Union takes no position on what Plaintiffs and TWA should do with their petitions (78-1545 & 78-1549). This would include any question whether review of those petitions should be limited, stayed, or the petitions dismissed, with or without prejudice.

2. The Union objects, however, to any limitation on any of the issues raised in its petition (80-951).

3. The characterization which Plaintiffs and TWA place on the issues raised by the Union is not entirely accurate. It is true that our only reason for pursuing this appeal is the grant of retroactive competitive seniority to the members of the Plaintiff class. It is not, however, accurate to state that the Union has no objections to the order approving the settlement agreement. The Union objects, *inter alia*, to the following provisions contained in the settlement agreement:

> (a) A provision which states that the settlement agreement supersedes "prior, current and future labor agreements." (See the Appendix to our Petition for Certiorari [80-951] at pp. 36a-37a).
>
> (b) Provisions stating that the District Court will retain jurisdiction to enforce the terms of the settlement and adjudicate any disputes which arise thereunder (Appendix to Petition 80-951 at 17a and 37a).
>
> (c) A provision which allows the District Court to determine and grant retroactive competitive seniority to the Plaintiff class (Appendix to Petition 80-951 at 20a, 29a-30a). It is this provision which the parties used to confer jurisdiction upon the Dis-

trict Court to grant seniority despite the unchanged finding of the Court of Appeals that jurisdiction is lacking.

4. The Union has always been on record as believing that there *can* be a settlement of these claims, even though they are jurisdictionally defective. We have questioned whether the settlement can be court approved (see Petition 80-951 at p. 14) and whether *this* settlement is valid. Our position has not changed. We take no position on the Plaintiffs' contention that TWA is contractually bound by the settlement whether or not the court approval is affirmed. We believe, however, that certainly TWA *could* be bound by *a* settlement if it would so agree.

5. While our position has remained consistent the position of Plaintiffs and TWA has not. Plaintiffs have contended throughout this litigation that acceptance of any of the Union's contentions would defeat the entire settlement (see, for example, Plaintiffs' Brief in Opposition to Petition 80-951, p. 12, n. 13). Now the Plaintiffs contend that there already is a final settlement, regardless of the outcome of the matters raised by the Union. TWA and the Plaintiffs were able to convince both the District Court and the Seventh Circuit to reject the Union's arguments on the theory that the parties should not be forced against their will to litigate before the Supreme Court. (See the Appendix to Petition 80-951 at 9a, 15a). Today both Plaintiffs and TWA take the position that their petitions can be dismissed without any effect upon the issues raised by the Union. We marvel at the inconsistency, and wonder why the parties did not take this position two years earlier.

CONCLUSION

We apologize to the Court for the confusion, but submit that it is not the Union which has caused it. Should the Court have any questions regarding the Union's position, we stand ready to respond to the Court's inquiry.

Respectfully submitted,

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